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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/870,784

Applicant(s)

GERMAIN ET AL.

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-8, 10-28, 42-49 and 51-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-6, 10-12, 15-18, 21-26, 42-45, 48, 49, 51, 53 and 54 is/are rejected.
- 7) ☒ Claim(s) 7, 8, 13, 14, 19, 20, 27, 28, 46, 47, 55 and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations of the second dispensing opening being configured to receive a straw and resilient members are previously set forth in the claim 12. Claims 17 and 18 should be canceled as depending from claim 12 to avoid redundancy.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 4,5,23-25, 42-44, 48,51,53, and 54, are rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper (US 2,753,051) in view of Braude (US 4,741,150).

Tupper teaches a closure having a unitary panel **11** with an opening **18** therethrough, a first flap **20a** for reducing the size of the opening of panel and a second flap **20** for closing the first flap. Tupper does not teach the panel, first flap and second flap are of unitary construction or the panel is configured to maintain the second panel in an open configuration.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the panel, first flap and second flap are of unitary construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Braude teaches known mechanisms for latching a lid flap in an open position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a mechanism for holding the second flap of Tupper in an open

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position as taught by Braude. Doing so allows one to pour or drink from an associated container via the lid without the need to hold the flap open with a finger.

4. Claim 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 42 above, and further in view of Wright (US 3,409,188).

Tupper as modified teaches the claimed closure except for indicia thereon.

Wright teaches is known in the art to supply indicia to a closure.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of indicia to the modified closure of Tupper. Doing so provides directions for use or merely decorative aesthetics.

5. Claims 10,11,12,15-18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tupper in view of Braude and Rohr et al. (US 5,271,531).

Tupper teaches a closure having a unitary panel 11 with an opening 18 therethrough, a first flap 20a for reducing the size of the opening of panel and a second flap 20 for closing the first flap. Tupper does not teach the panel, first flap and second flap are of unitary construction, the panel is configured to maintain the second panel in an open configuration, or a plurality of resilient members in the first flap configured to receive and maintain a straw.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the panel, first flap and second flap are of unitary construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Braude teaches known mechanisms for latching a lid flap in an open position.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a mechanism for holding the second flap of Tupper in an open

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position as taught by Braude. Doing so allows one to pour or drink from an associated container via the lid without the need to hold the flap open with a finger.

Rohr teaches it is known to provide a dispensing opening with a plurality of resilient members configured to engage a straw.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient members to the dispensing opening of the first flap as taught by Rohr to the lid of Tupper. Doing so allows for not only the resilient members to receive and maintain a straw therein, but to also control the flow of liquid dispensed through therethrough.

6. Claims 6,26 and 45,are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 5,25, and 42 above, and further in view of Rohr.

Tupper as modified teaches the claimed closure except for a plurality of resilient members to receive and maintain a straw.

Rohr teaches it is known to provide a dispensing opening with a plurality of resilient members configured to engage a straw.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a plurality of resilient members to the dispensing opening of the first flap as taught by Rohr to the lid of Tupper. Doing so allows for not only the resilient members to receive and maintain a straw therein, but to also control the flow of liquid dispensed through therethrough.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 15 above, and further in view of Wright.

Tupper as modified teaches the claimed closure except for indicia thereon.

Wright teaches is known in the art to supply indicia to a closure.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of indicia to the modified closure of Tupper. Doing so provides directions for use or merely decorative aesthetics.

Allowable Subject Matter

8. Claims 7,8,13,14,19,20,27,28,46,47,55, and 56 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Closures with flap latching mechanisms are cited for their disclosures.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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12. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

13. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 872-7306 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

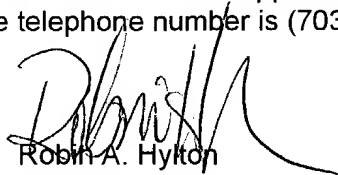
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Technology Center 3700 Customer Service Office at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
May 16, 2004


Robin A. Hylton
Primary Examiner
GAU 3727